

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATION, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Jointly Administered)

**REPLY OF TRUSTEES OF THE ESTATE OF BERNICE PAUAHI BISHOP, D/B/A
KAMEHAMEHA SCHOOLS, LLC TO THE OMNIBUS OBJECTION OF TRANSFORM
HOLDCO LLC TO LICENSOR AND LANDLORD MOTIONS TO COMPEL, AND IN
FURTHER SUPPORT OF MOTION TO COMPEL PAYMENT OF POST-PETITION
RENT AND RELATED LEASE OBLIGATIONS PURSUANT TO 11 U.S.C. §§ 105(a),
365(d)(3) AND 503(b)(1)(A) AND TO PAY ALL SUBSEQUENT AMOUNTS OWED ON
A TIMELY BASIS**

The Trustees of the Estate of Bernice Pauahi Bishop, d/b/a Kamehameha Schools (the “Landlord”), through their undersigned counsel, submit this Reply (the “Reply”) to the *Omnibus Objection of Transform to Licensor and Landlord Motions to Compel* (the “Transform Objection”), and in Further Support of the Landlord’s *Motion to Compel Payment of Post-Petition*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Rent and Related Lease Obligations Pursuant to 11 U.S.C. §§ 105(a), 365(d)(3) and 503(b)(1)(A) (the “Motion”) (Docket No. 2414).² In support of the Reply, the Landlord respectfully states as follows:

1. The Landlord submits this Reply to point out that the Transform Objection completely misses the mark on the issues of adequate protection and timely payment. The Transform Objection incorrectly asserts that the Motion is an inappropriate attempt to force Transform to make a premature decision to assume or reject the lease for the premises in Kaneohe, Hawaii (“Windward Mall”). The Transform Objection conveniently ignores the fact that the Landlord was entitled to adequate protection when the Motion was filed in February, and is entitled to timely payment of the full rent going forward.

2. The Debtor has been operating outside the ordinary course of business at Windward Mall since July 2018, when it affirmatively exercised a 5 year option under the Lease, yet failed to increase the corresponding rent payment as required by the Lease. The current monthly rent and common area maintenance charges are \$289,128.35. The Debtor, in contrast, has been paying only \$92,747.79 per month since July 1, 2018 which represents less than 26% of the monthly rent required under the Lease. The resulting shortfall is \$196,380.56 per month. When the Motion was filed, the Debtor owed the Landlord approximately \$872,336.51 in post-petition rent. As of March 1, 2019, the Debtor owed over \$1.3 million and as of April 1, 2019, the post-petition arrears will be in excess of \$1.5 million.

3. Given the substantial risk of administrative insolvency facing the Debtors’ estate and the significant post-petition liability that continues to accrue at the Premises, the timing of the Motion was appropriate and necessary to protect the Landlord’s interests. The Motion was

² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Motion.

intended by the Landlord to secure appropriate payment or adequate protection for the Debtors' post-petition use of the premises and to highlight the need for the parties to resolve the rent issue as soon as possible or, if necessary, close the store and reject the lease to minimize the continued accrual of a significant administrative liability.

4. This issue is not new. While the Transform Objection overlooks this fact, the Debtor has been on notice since before July 2018 that the gross monthly rent for the Windward Mall premises would increase dramatically if the Debtor exercised its option at that time. Since then, as set forth in the Motion, the Debtor has failed to comply with its obligations to timely pay the full rent or provide adequate protection to the Landlord for its use of the premises outside the ordinary course of business.

5. Recent cross motions between Sears and ESL, Transform's parent company, about disputed administrative obligations of Transform under the APA highlight the increasing risk of administrative insolvency. The Landlord has reluctantly agreed to adjourn the hearing on the Motion until April 18, 2019, but the additional time should be used by the Debtors and Transform to constructively focus on the economics of this Lease without putting the Landlord at further risk of holding a claim for unpaid rent against an administratively insolvent estate.

Dated: March __, 2019
New York, New York

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/s/ Robert L. LeHane

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CERTIFICATE OF SERVICE

On the 20th day of March, 2019, true and correct copies of the *Reply of Trustees of the Estate of Bernice Pauahi Bishop, d/b/a Kamehameha Schools, LLC to the Omnibus Objection of Transform Holdco LLC to Licensor and Landlord Motions to Compel, and in Further Support of Motion to Compel Payment of Post-Petition Rent and Related Lease Obligations Pursuant to 11 U.S.C. §§ 105(a), 365(d)(3) and 503(b)(1)(A) and to Pay All Subsequent Amounts Owed on a Timely Basis* were served via this Court's CM/ECF electronic filing system upon those parties requesting service and upon those parties listed below via United States first class mail:

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